

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 22

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO WATER RIGHT LICENSES; AMENDING SECTION 42-219, IDAHO CODE, TO
DELETE THE REQUIREMENT THAT LICENSES BE ISSUED UNDER THE SEAL OF THE
OFFICE OF THE DEPARTMENT OF WATER RESOURCES, TO DELETE THE REQUIREMENT
THAT LICENSES BEAR THE CAPACITY OF THE DIVERTING WORKS AND TO MAKE A
TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-219, Idaho Code, be, and the same is hereby
amended to read as follows:

42-219. ISSUANCE OF LICENSE -- PRIORITY. (1) Upon receipt by the de-
partment of water resources of all the evidence in relation to such final
proof, it shall be the duty of the department to carefully examine the same,
and if the department is satisfied that the law has been fully complied with
and that the water is being used at the place claimed and for the purpose for
which it was originally intended, the department shall issue to such user or
users a license confirming such use. Such license ~~shall be issued under the~~
~~seal of the office of the department of water resources,~~ and shall state the
name and post-office address of such user, the purpose for which such water
is used, and the quantity of water which may be used, which in no case shall
be an amount in excess of the amount that has been beneficially applied. A
license may be issued to a municipal provider for an amount up to the full
capacity of the system constructed or used in accordance with the original
permit provided that the director determines that the amount is reasonably
necessary to provide for the existing uses and reasonably anticipated future
needs within the service area and otherwise satisfies the definitions and
requirements specified in this chapter for such use. The director shall con-
dition the license to prohibit any transfer of the place of use outside the
service area, as defined in section 42-202B, Idaho Code, or to a new nature
of use of amounts held for reasonably anticipated future needs together with
such other conditions as the director may deem appropriate.

(2) If such use is for irrigation, such license shall give a descrip-
tion, by legal subdivisions, of the land which is irrigated by such water,
except that the general description of a place of use described in accordance
with subsection (5) or (6) of this section may be described using a digital
boundary, as defined in section 42-202B, Idaho Code. If the use is for munic-
ipal purposes, the license shall describe the service area and shall state
the planning horizon for that portion of the right, if any, to be used for
reasonably anticipated future needs.

(3) Such license shall bear the date of the application for, and the
number of, the permit under which the works from which such water is taken
were constructed; ~~the capacity of such works;~~ the date when proof of benefi-

1 cial use of such water was made, and also the date of the priority of the right
2 confirmed by such license.

3 (4) The date of priority confirmed by the license shall be the date of
4 the application for the permit for the construction of the works from which
5 the water is taken, and to which the right relates, provided there has been
6 no loss of priority under the provisions of this chapter. Whenever proof
7 of the beneficial application of water shall be offered subsequent to the
8 date stated in the permit, or in any authorized extension thereof, when such
9 beneficial application shall be made, the proof shall be taken, if received
10 by the department within the sixty (60) days prescribed in the preceding
11 section. If the proof taken is satisfactory to the department of water re-
12 sources, a license shall be issued by the department the same as though proof
13 had been made before the date fixed for such beneficial application. The
14 priority of the right established by the proof shall not date back to the date
15 of the application for the permit to which the right would relate under the
16 provisions of this chapter, but shall bear a date which shall be subsequent
17 to the date of the application, a time equal to the difference between the
18 date set in the permit, or extension thereof, for such beneficial applica-
19 tion of water and the date of proof.

20 (5) For irrigation projects where the canals constructed cover an area
21 of twenty-five thousand (25,000) acres or more, or within irrigation dis-
22 tricts organized and existing as such under the laws of the state of Idaho,
23 the license issued shall be issued to the persons, association, company,
24 corporation or irrigation district owning the project, and final proof may
25 be made by such owners for the benefit of the entire project. It shall not
26 be necessary to give a description of the land by legal subdivisions but a
27 general description of the entire area under the canal system shall be suffi-
28 cient. The water diverted and the water right acquired thereby shall relate
29 to the entire project and the diversion of the water for the beneficial use
30 under the project shall be sufficient proof of beneficial use without regard
31 as to whether each and every acre under the project is irrigated or not.

32 (6) For an irrigation project developed under a permit held by an as-
33 sociation, company, corporation or the United States to divert and deliver
34 or distribute surface water under any annual charge or rental for benefi-
35 cial use by more than five (5) water users in an area of less than twenty-five
36 thousand (25,000) acres, the license issued shall be issued to the permit
37 holder. For the place of use description in the license issued for the ir-
38 rigation project, it shall be sufficient to provide a general description
39 of the area within which the total number of acres developed under the per-
40 mit are located and within which the location of the licensed acreage can be
41 moved provided there is no injury to other water rights.

42 (7) Subject to other governing law, the location of the acreage irri-
43 gated within a generally described place of use, as defined in accordance
44 with subsections (5) and (6) of this section and as filed with the department
45 pursuant to section 43-323, Idaho Code, may be changed without approval un-
46 der the provisions of section 42-222, Idaho Code. However, the change shall
47 not result in an increase in either the rate of flow diverted or in the total
48 number of acres irrigated under the water right and shall cause no injury to
49 other water rights. If the holder of any water right seeks to challenge such
50 a change, the challenge may only be brought as an action initiating a con-

1 tested case before the department, pursuant to the administrative procedure
2 act, chapter 52, title 67, Idaho Code. Nothing in this section shall be con-
3 strued to grant, deny or otherwise affect an irrigation district's authority
4 to deliver water to areas outside the boundaries of such district.

5 (8) In the event that the department shall find that the applicant has
6 not fully complied with the law and the conditions of permit, it may issue a
7 license for that portion of the use which is in accordance with the permit, or
8 may refuse issuance of a license and void the permit. Notice of such action
9 shall be forwarded to the permit holder by certified mail. The applicant may
10 contest such action by the department pursuant to section 42-1701A(3), Idaho
11 Code.